IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.8 OF 2006

(1) Ganesh Tolu Gaukar
(deceased) represented by
his legal heirs and others. ..... Petitioners.

V/s.

Shri Ramcrishna Govind Dessai
and others. ..... Respondents.

Shri S.S. Kakodkar, Advocate for the petitioners.

Respondent No.1 though served, absent.

Ms. R. Chodankar, Addl. Government Advocate for the respondents No.2 and 3.

Ms. P. Naik, Advocate for the respondent No.4.

CORAM : R.M.S. KHANDEPARKAR, J.

DATE : 16TH FEBRUARY, 2006.

P.C.

Heard Advocate for the petitioners and the Advocates for the respondents No.2 and 3 as well as for respondent No.4. None present for the respondent No.1 though served. Notice was issued for final disposal of the petition at the admission stage.

2. The petitioners challenge the order dated 21.10.2005 whereby the cross examination of the defendant No. 10 has been ordered to be closed. It is the case of the petitioners that on

21.10.05 when the matter was taken up for recording evidence, the defendant No.10 filed its evidence in the form of affidavit and along with the affidavit also produced certain documents though it had failed to file any list of documents or to seek leave of the Court for production of such document in the absence of a list being filed in respect thereof. It is their further case that neither the petitioners nor their Advocate could remain present on the said date of hearing on account of mistake in recording of the date by the Advocate for the petitioners. It is their case that the Advocate for the petitioners was under impression that the hearing of the matter was fixed on 21.11.05 and not on 21.10.2005 and, therefore, he did not remain present in the Court on 21.10.05.

3. Irrespective of the absence of the Advocate for the petitioners in the Court at the time of hearing of the matter, once the party had filed affidavit accompanied by documents to be treated as evidence in terms of the provisions comprised under Order 18, Rule 4 of C.P.C., it was necessary for the Court to ascertain whether the documents sought to be produced have been already relied upon or not and secondly whether the documents are admissible or not. Merely because the party chooses to rely upon certain documents along with the evidence in the form of affidavit to be filed in terms of of the provisions comprised under Order 18, Rule 4 of C.P.C., the Court, as a matter of course, is not bound to allow such documents without deciding the admissibility issue of such documents. It is only

upon such verification and ascertaining that the party producing the documents has complied with the provisions of law in relation to production of documents, that the documents can be allowed to be exhibited in evidence. Apparently, in the case in hand, the trial Court has totally ignored the obligation in this regard and on the top of it, it had ordered cross examination of defendant No.10 to have been closed. Considering the same, the impugned order cannot be sustained and is liable to be set aside and the matter is required to be remanded to the trial Court to reconsider the issue regarding admissibility of the documents were sought to be produced along with the affidavit of defendant No.10 giving opportunity to the petitioners and other parties to the proceedings to object to the admissibility of such documents in law and further to cross examine the defendant No.10 in relation to the affidavit evidence filed by the said defendant.

4. In the result, therefore, the petition succeeds. The impugned order is, hereby, set aside and the matter is remanded to the trial Court to proceed with the suit bearing in mind the observations contained hereinabove and in accordance with the provisions of law. The petition, accordingly, stands disposed of with no order as to costs.

R.M.S. KHANDEPARKAR, J.

ssm.